

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BARON FINANCIAL CORPORATION,

*

Plaintiff,

*

v.

*

Civil Action No. MJG 03 CV 168

ERN, LLC

*

Defendant

*

*

* * * * *

**MEMORANDUM IN SUPPORT OF DEFENDANT/COUNTERCLAIMANT ERN, LLC'S
MOTION FOR LEAVE TO FILE THIRD-PARTY COMPLAINT**

Defendant ERN, LLC, by its attorneys, Paul Mark Sandler, Robert B. Levin, Eric R. Harlan, Shapiro, Sher, Guinot & Sandler, and pursuant to Federal Rules of Civil Procedure 7(b) and 14(a), submits the following Memorandum in Support of its Motion for Leave to File Third-Party Complaint:

Argument—The Court Should Permit ERN, LLC to Assert its Third-Party Claims

This action involves claims between the parties arising out of a Memorandum of Understanding (“MOU”) settling the matter of Michelle Trading Corporation v. Rony Natanzon, Civil Action No. MJG—02-CV-1868, a prior dispute between the parties and persons and entities affiliated with the parties. ERN proposes to file Third-Party claims against Sam Buchbinder, who was a party to the MOU, and who controls Plaintiff Baron, arising out of Mr. Buchbinder’s alleged breach of a non-solicitation provision in the MOU. ERN also proposes to assert the same Third-Party claims against Abanco International LLC (“Abanco”)—another entity that is controlled by Buchbinder.

1. ERN's Motion is Timely

Pursuant to Federal Rule of Civil Procedure 14, a defendant must obtain leave of court to file a Third-Party Claim if the claim is filed more than ten (10) days after serving the original answer. The motion is addressed to the Court's discretion, and the question of the motion's timeliness depends upon the facts of the particular case. See 6 Wright, Miller & Kane, Federal Practice and Procedure, §1454 (West 1990) (citations omitted). In the present case, the Court has entered a scheduling order granting the parties until March 31, 2003 to move to join additional parties. ERN's Motion is within that deadline, and therefore the Motion is timely.

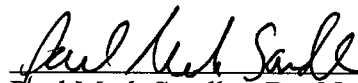
2. ERN's Motion is Meritorious

When considering a motion for leave to file a Third-Party Complaint, the Court also looks to the merits of the motion as they appear at the time it is made. 6 Wright, Miller & Kane, Federal Practice and Procedure, §1454 (West 1990). ERN's proposed Third-Party Claim involves the alleged breach of an agreement that is already before the Court—placed at issue by the Plaintiff, Baron—and which would involve joining parties familiar with the existing subject matter of the action, and which would likely be represented by Baron's counsel. Thus, there would be no prejudice to the existing parties if the Court were to grant ERN's Motion and permit the Third-Party Complaint.

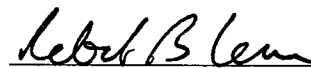
Conclusion

For the reasons set forth above, this Court should grant ERN, LLC's Motion for Leave to File Third-Party Complaint.

Respectfully submitted,



Paul Mark Sandler, Bar No. 00145



Robert B. Levin, Bar No. 00695



Eric R. Harlan, Bar No. 23492

SHAPIRO, SHER, GUINOT & SANDLER
Suite 2000
36 South Charles Street
Baltimore, Maryland 21201
(410) 385-0202

Attorneys for Defendant/Counter-Plaintiff ERN, LLC